

1 DAVID N. MAKOUS (State Bar # 082409)
 makous@lbbslaw.com
 2 DANIEL C. DECARLO (State Bar # 160307)
 decarlo@lbbslaw.com
 3 MINA I. HAMILTON (State Bar # 213917)
 hamilton@lbbslaw.com
 4 LEWIS BRISBOIS BISGAARD & SMITH LLP
 221 North Figueroa Street, Suite 1200
 5 Los Angeles, California 90012-2601
 Telephone: (213) 250-1800
 6 Facsimile: (213) 250-7900
 7 Attorneys for Plaintiffs
 TRAFFICSCHOOL.COM, INC. and
 8 DRIVERS ED DIRECT, LLC, California companies.

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

13 TRAFFICSCHOOL.COM, INC.,
 14 a California corporation; DRIVERS ED
 15 DIRECT, LLC, a California limited
 liability company,

16 Plaintiffs,

17 vs.

18 EDRIVER, INC., a California
 corporation; ONLINE GURU, INC.,
 19 FIND MY SPECIALIST, INC., and
 20 SERIOUSNET, INC., California
 corporations; RAVI K. LAHOTI, an
 individual; RAJ LAHOTI, an individual;
 21 and DOES 1 through 10,

22 Defendants.

) Case No. CV 06-7561 PA (CWx)

) The Honorable Percy Anderson

) **PLAINTIFFS' EVIDENTIARY**
) **OBJECTIONS TO THE**
) **DECLARATIONS OF DAVID GRAY,**
) **RAJ LAHOTI AND MARK ALCOCK**
) **FILED IN SUPPORT OF**
) **DEFENDANTS' OPPOSITION TO**
) **PLAINTIFFS' MOTION FOR**
) **CONTEMPT**

) Date: February 2, 2009
) Time: 1:30 p.m.
) Courtroom: 15

25 Plaintiffs hereby submit their evidentiary objections to Defendants'
 26 Declarations in Support of Defendants' Opposition to Plaintiffs' Motion for
 27 Contempt:
 28 ///

1 **A. Objections to the Declaration of David Gray:**

2 1. Mr. Gray offers no foundation as to his expertise in creating splash
3 pages, and he thus lacks the proper foundation to discuss any factors relating to the
4 implementation of a splash page. It appears from his declaration that this is his first
5 experience with designing a splash page.

6 2. Plaintiffs object to the entirety of Mr. Gray's declaration to the extent
7 that Mr. Gray relies on the point that when implementing a splash page, one must
8 take into consideration its impact upon the ability of the webpage to maintain its
9 organic web traffic. This is irrelevant. This Court's Injunction makes no mention of
10 maintaining the searchability of DMV.org through organic links. The Court's
11 Injunction requires that all viewers be directed to the splash page, not that the most
12 viewers possible be directed to the splash while retaining the ability of consumers to
13 find DMV.org through free organic web searches. Thus, any mention of search
14 engine indexes, accessibility of the webpage, and organic links are irrelevant.

15 ¶ 9. The statement that, "A splash page that masks DMV.ORG's
16 content from search engines... would prevent users from finding its content through
17 search engines" lacks foundation, is irrelevant and is demonstrably untrue. The trial
18 record supports the fact that DMV.org's ability to be seen by consumers through
19 "pay-per-click" searches is unaffected by the content of the website because
20 DMV.org is in control of the description of their website when using pay-per-clicks.
21 See Court's Order "Findings of Fact and Conclusions of Law & Order Finding
22 Defendants Liable for False Advertising", pg 11.

23 ¶ 22. Mr. Gray declares that a splash page created with Java Script and
24 cookies was the best solution available that would allow DMV.org to still be
25 accessible to search engines. This statement is irrelevant to the matters at hand for
26 the reasons mentioned above. The statement also lacks the proper foundation as it
27 contradicts the earlier trial court testimony that Pay-Per-Clicks are not affected by the
28 contents of a website and are at the direct control of DMV.org. Thus DMV.org

1 would be accessible from search engines regardless of its content or web ranking.
2 Mr. Gray's subsequent statements relating to portions of the DMV.org website which
3 will not work if Java Script is disabled on a users computer is irrelevant as it does not
4 relate to the Injunction issued by this Court.

5 5. ¶ 30. Mr Gray lacks the appropriate foundation necessary to state that
6 there is no industry standard for splash pages as he has shown no possible source of
7 that knowledge.

8
9 **B. Objections to the Declaration of Raj Lahoti:**

10 1. ¶ 5. Mr. Lahoti's statements with regard to other text on DMV.org
11 other than the splash page are irrelevant. The Court's Injunction only relates to the
12 creation of a splash page, not other text on DMV.org.

13 2. ¶ 7-8. Mr. Lahoti's declarations in paragraphs seven and eight are
14 irrelevant as the number of visitors to DMV.org and other sites do not have any
15 bearing on whether or not Defendants have properly complied with the Court's
16 Injunction. Moreover, these statements lack any proper foundation and are hearsay
17 due to the fact that they are from a third party source and Mr. Lahoti has no actual
18 knowledge as to the veracity of the statistics nor any knowledge of how the statistics
19 were calculated.

20
21 **C: Objections to the Declaration of Mark Alcock:**

22 1. Mr. Alcock lacks the proper foundation to testify. He is a forensic
23 examiner and forensics have nothing to do with the contempt issues. Mr. Alcock
24 does not state that he has any background or indeed any experience (let alone
25 expertise) in designing web pages or splash pages.

26 2. ¶ 16-17. Mr Alcock's statement that no solution can guarantee 100%
27 compliance with the literal terms of the Injunction not only lacks foundation, but is
28 also contradictory to Mr. Gray's statement in ¶ 30 of his Declaration in Support of

1 Defendants' Opposition to this Motion for contempt. Mr. Gray opines that "there is
2 no industry standard for splash pages, and no method, that will assure 100% user
3 penetration without at the same time precluding search engines from identifying
4 content on the site itself". (Emphasis added). Implicit in Mr. Gray's statement is
5 that if a designer accepts some compromise in organic search capability 100%
6 penetration is possible. Mr. Alcock's legal and factual conclusions are also
7 irrelevant as he lacks any adequate background to make such statements. Mr.
8 Alcock's use of statistics is improper as he lacks any foundation to testify on theses
9 facts. He has offered no evidence of his background in statistical analysis nor has he
10 offered any evidence of any surveys or data analysis which would allow him to
11 accurately determine whether his findings are indeed statistically significant or not.

12 3. ¶ 18. Mr. Alcock again attempts to use the term "statistically
13 significant" without having any proper foundation to do so. He again contradicts Mr.
14 Gray's statements in ¶ 30 of his Declaration while at the same time lacking the
15 proper foundation to make such a statement.

16 4. ¶ 19. All of his statements related to the other text on DMV.org's
17 website is irrelevant.

18 5. ¶ 20-21. Mr. Alcock's statements in paragraphs 20 and 21 are
19 irrelevant. Moreover Mr. Alcock lacks the proper foundation to declare whether or
20 not users would or would not be confused as he has no consumer perception
21 expertise.

22
23
24
25
26 ///

27 ///

28 ///

1 **D: Objections to the Declaration of Scott Annett:**

2 1. Mr. Annett's testimony is unreliable because it relies on hearsay and
3 lacks foundation. A proper foundation for the reliability of the analytics software
4 referenced in Mr. Annett's declaration has not been set forth.

5
6 DATED: January, 26, 2009

LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By /s/ Mina I. Hamilton

9 DAVID N. MAKOUS
10 DANIEL C. DECARLO
11 MINA I. HAMILTON
12 Attorneys for Plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28